



MISSOURI DEPARTMENT OF MENTAL HEALTH

Dorn Schuffman, Department Director



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
8.140

CHAPTER Regulatory Compliance	SUBCHAPTER HIPAA Regulations	EFFECTIVE DATE 6/01/03	NUMBER OF PAGES 3	PAGE NUMBER 1 of 3
SUBJECT HIPAA Complaint Process		AUTHORITY 45 CSR Section 164.502 et seq	History See Below	
PERSON RESPONSIBLE Deputy Director, Office of Quality Management			Sunset Date 7/01/06	

PURPOSE: It is the policy of the Department of Mental Health to provide consumers with the means to file a complaint if they believe that their protected health information has been improperly used or disclosed. See 45 CFR Section 164.530(d)(1).

APPLICATION: The Department of Mental Health, its facilities and workforce.

(1) **DEFINITIONS:** As used in this operating regulation, the following terms shall mean:

(A) **Complaint:** allegation that a consumer's protected health information has been improperly used or disclosed. A consumer may file a complaint, or a legal guardian or personal representative or a parent, if a minor, may file the complaint. The original complaint form is to be placed in the consumer's medical record. If the consumer has a guardian, a copy of the complaint shall be sent to the guardian, and the consumer should be notified that such action has occurred.

(B) **Consumer:** Any person who has received services or who is receiving services from a Department of Mental Health state-operated facility.

(C) **Protected Health Information:** individually identifiable health information, defined as any information, including demographic information, collected from an individual that:

1. Is created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

2. Related to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and

a. identifies the individual, or

b. with respect to which, there is reasonable basis to believe that the information can be used to identify the individual.

(2) **PROCEDURE:** The Department strongly encourages, and wishes to promote that consumers and service providers discuss and attempt to resolve issues in the most direct and informal manner and at the local level. The following steps constitute the

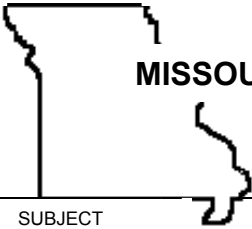
HIPAA complaint process.

(A) Utilize standardized DMH HIPAA Privacy Complaint form.

(B) Forward a copy of the complaint form to the facility Privacy Officer or designee if the alleged violation took place at the facility, or to the Central Office Privacy Officer or designee, if the alleged violation took place at the Central Office level.

(C) The HIPAA Privacy Complaint must describe the acts or omissions the consumer believes to have occurred.

(D) The HIPAA Privacy Complaint must include the following information:



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1. the date on which the alleged act or omission occurred;
2. a description of the PHI affected and how it was affected; and
3. the name(s) of anyone who may have improperly been provided with the

PHI.

(E) All Privacy Complaints received by the Privacy Officer or designee will be date-stamped upon arrival.

1. The Privacy Officer or designee will review and act on the complaint in a timely manner and not more than 30 days from receipt of the complaint. If greater time is necessary to review and investigate the complaint, the Privacy Officer or designee shall, within 30 days, notify the consumer of the delay, and inform the grievant of the expected timeframe for completion of the review.

2. The Privacy Officer or designee shall determine what PHI is affected by the complaint and if the PHI was provided to other covered entities and business associates.

3. If the affected PHI was created and maintained by a business associate, the complaint will be forwarded to the business associate as outlined in the Business Associate Agreement. Complaints forwarded to business associates will be logged and a notice of the action sent to the consumer making the complaint.

(F) The Privacy Officer or designee shall determine if there is cause to believe that a violation of privacy department operating regulations occurred, and the course of action to be taken.

1. If no violation has occurred the complaint and finding will be date-stamped, the complaint will be considered closed and a written notice of this shall be provided to the consumer.

2. If cause exists to believe that a violation has occurred, the Privacy Officer or designee shall be responsible for determining if:

- a. Performance or training need to be improved;
- b. A recommendation for a change to the department operating regulation should be forwarded to the Central Office Privacy Officer (if a facility complaint); or
- c. A recommendation should be made to the Central Office Privacy Officer to establish a new Privacy department operating regulation (if a facility complaint).

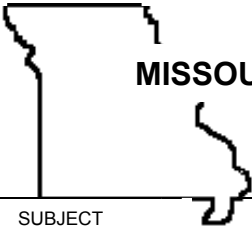
3. The Privacy Officer or designee shall notify the appropriate administrators, staff or committees of the action needed.

4. If employee discipline must be taken, it must follow the department operating regulation on sanctions, and is to be initiated by the appropriate appointing authority.

(G) If the complaint resolution finds that no cause exists to believe a violation occurred, then the consumer may seek resolution to the Central Office Privacy Office (if it is a facility based complaint).

1. The consumer, through completion of the Complaint Form, will request that the facility Privacy Officer or designee forward the complaint to the Central Office Privacy Office.

2. The Central Office Privacy Office will review and act on the complaint in a timely manner and not more than 30 days from receipt of the complaint form.



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(H) The Central Office Privacy Office shall determine one of the following.

1. That the original determination of the facility Privacy Officer is accurate.
2. That remediation should occur at the facility level through increased training, or that a recommendation is made to the facility appointing authority for possible disciplinary action.
3. That a recommendation for department operating regulation review be initiated at the Central Office level.
4. That a recommendation be made for the establishment of a new department operating regulation.

(I) The original complaint form shall be placed in the consumer's medical record.

(2) RETENTION: The facility Privacy Officer or designee, or the Central Office Privacy Officer or designee's primary responsibilities in the HIPAA Complaint process include logging and retaining complaints in a retrievable manner for a minimum of six years, and identifying:

- (A) Person or entity making the complaint;
- (B) Date complaint was received;
- (C) A list of what PHI was affected;
- (D) Status of complaint;
- (E) A list of business associates or facilities affected; and
- (F) Actions taken.


(3) There shall be no retaliation against any consumer, or against a workforce member for assisting a consumer to file a HIPAA Privacy Complaint.

(4) NO LOCAL POLICIES: There shall be no local policies on this topic. The Department Operating Regulation shall control.

(5) SANCTIONS: Failure to comply or assure compliance with this DOR shall result in disciplinary action, up to and including dismissal.

(6) REVIEW PROCESS. The Central Office Privacy Officer will collect information from the facility Privacy Officers during the month of April each year beginning in 2004 for the purpose of providing feedback to the Deputy Director, Office of Quality Management and to the Executive Team to determine the incidents of denial or granting of such appeals. Statistics shall be kept according to the four choices for decision as listed on the complaint form.

History: Emergency DOR effective January 15, 2003. Final DOR effective June 1, 2003.

	STATE OF MISSOURI DEPARTMENT OF MENTAL HEALTH PRIVACY COMPLAINT FORM	
	Consumer Name:	Statewide ID/Local ID Number
Consumer Address		
Today's Date:	Date acts or omissions are believed to have occurred:	
Description of the acts or omission believed to be in violation of privacy.		
Please describe the Protected Health Information affected.		
Do you know of anyone who may have received the PHI? YES _____ NO _____ If so, please specify the name and address of the organization or individual:		
Signature of Consumer or Legal Representative		Date
Missouri Department of Mental Health Use Only		
<input type="checkbox"/> No Violation Occurred		
<input type="checkbox"/> Possible Violation, and Remedial Action Needed	<input type="checkbox"/> Changes need to be made to existing DORs	<input type="checkbox"/> New DORs need to be created

POSSIBLE APPEAL, IF FACILITY BASED COMPLAINT

____ Yes ____ No (check one) I disagree with the resolution, and I request that this complaint be forwarded to the Central Office Privacy Office for review.

Signature of Consumer or Legal Representative

Date

Date Received in Central Office